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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,641

09/29/2003

Jong Kil

A03P1068

4692

36802 7590 04/16/2007
PACESETTER, INC.
15900 VALLEY VIEW COURT
SYLMAR, CA 91392-9221

EXAMINER

SMITH, TERRI L

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

04/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/674,641

Applicant(s)

KIL ET AL.

Examiner

Terri L. Smith

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 30 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

GEORGE R. EVANISKO
PRIMARY EXAMINER

4/12/07

LLS
6 April 2007

Continuation of 11. does NOT place the application in condition for allowance because: With regard to Applicants' arguments, prosecution on the merits is closed. Examiner maintains that the Struble reference discloses Applicant's claimed invention set forth in claims 1 and 12 as stated in the Office Action mailed on 27 February 2007 and as re-stated by Applicants in Applicants' arguments filed on 30 March 2007.

In response to Applicants' arguments and some of the statements regarding the Struble reference, it is the Examiner's position that the Applicants' statements support the reference of Struble as meeting the claimed limitations set forth in claims 1 and 12, and as argued herein below.

Regarding Applicants' statement that "the Examiner points to column 15, lines 49-51 to allege that Struble teaches that the frequency of an sVT can be determined through the collection of timing data and that Struble therefore discloses utilizing the frequency of an arrhythmia to identify the originating chamber of the arrhythmia and Applicants disagree," Examiner emphasized in the Response to Arguments section in said Office Action and in the 35 USC 102 rejection section (paragraph 7 page 4) that the claimed atrial limitations were accomplished 'in a similar fashion' as those of the the sVT and as stated in column 15 line 56. Examiner pointed to the sVT teaching for the purpose of the frequency teaching which was absent from the atrial teaching, but was 'tied' in to the sVT teaching with the 'in a similar fashion' statement. Examiner additionally pointed to the ensuing atrial teaching in column 15 lines 56-58 and 64-67 and column 16 lines 1-3. Examiner also pointed to column 2, lines 50-65 as teaching the claimed limitations set forth in claims 1 and 12.

Regarding Applicant's statement that "the system of Struble determines the origin of various atrial arrhythmias as a function of the percentage of events first sensed in the right or left chambers," this teaching meets the claimed limitation of a processor operative to evaluate frequencies of left and right atrial signals (with the processor being shown in Figures 1-6) in that the percentage of events represents frequencies. The claim does not explicitly state what represents frequencies.

Regarding Applicant's statement that "for instance, in the example illustrated in FIGS. 12A and 12B, the percentage of atrial flutter/atrial fibrillation AFL/AF events first sensed in the right atrium is 40% and the percentage first sensed in the left atrium is 60% such that the atrial arrhythmias are predominately being initiated in the left atrium. (Struble, col. 15, lines 56-67)," this teaching meets the claimed limitation of if one of the left and right signals has a higher frequency, the processor determines the atrium with the higher frequency (in this case, 60%) to be a source of atrial flutter, with 60% being higher than 40% and the percentages representing frequency. It is readily apparent that a source of atrial flutter is detected in this Struble teaching.

Consequently, regarding Applicant's argument that Struble does not however disclose or suggest a processor operative to evaluate frequencies of left and right atrial signals and, if one of the left and right signals has a higher frequency, the processor determines the atrium with the higher frequency to be the source of atrial flutter as recited in claims 1 and 12 of the present invention, Examiner respectfully disagrees as argued herein above.